

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chair Arizona Corporation Commission
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

DOCKETED

SEP 02 2015

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AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKETED BY

MLB

DOCKET NO. S-20837A-12-0061

OUT OF THE BLUE PROCESSORS, LLC,
an Arizona limited liability company, d/b/a
Out of the Blue Processors II, LLC; and

MARK STEINER (CRD #1834102) and
SHELLY STEINER, husband and wife,

Respondents.

TWENTIETH
PROCEDURAL ORDER
(Grants Continuance)

BY THE COMMISSION:

On February 22, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of Opportunity for Hearing ("Notice") against Out of the Blue Processors, LLC ("OBP"), an Arizona limited liability company dba Out of the Blue Processors II, LLC, and Mark Steiner and Shelly Steiner, husband and wife, (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of certificates of interest or investment contracts.

Respondent spouse, Shelly Steiner, was joined in the action for the purpose of determining the liability of the marital community pursuant to A.R.S. §44-2031(C).

The Respondents were duly served with copies of the T.O. and Notice.

On March 14, 2012, Respondents filed a request for hearing in this matter.

On March 15, 2012, by Procedural Order, a pre-hearing conference was scheduled on April 12, 2012.

On April 10, 2012, Respondents' counsel filed a Motion to Continue the pre-hearing conference because his client was out of the country on business and was not expected to return until the end of the month. It was indicated that the Division did not oppose the motion.

1 On April 11, 2012, by Procedural Order, the pre-hearing conference was continued to May
2 16, 2012.

3 On May 16, 2012, the Division and Respondents appeared with counsel. Counsel for the
4 Division indicated that the parties were discussing the issues raised by the T.O. and Notice, and
5 requested that a status conference be scheduled in approximately 60 days. Respondents agreed with
6 the Division's request to schedule a status conference. Subsequently, by Procedural Order, a status
7 conference was scheduled on July 19, 2012.

8 On July 19, 2012, the Division and Respondents appeared through counsel at the status
9 conference. Counsel for the Division indicated that the parties were continuing to discuss the issues
10 raised by the T.O. and Notice, and were attempting to reach a settlement in the proceeding. In the
11 interim, the Division requested that another status conference be scheduled in approximately 60 days.
12 Respondents agreed with the Division's request to schedule a status conference.

13 On July 20, 2012, by Procedural Order, a status conference was scheduled on October 4, 2012.

14 On October 1, 2012, Respondents filed a Motion to Vacate the status conference scheduled on
15 October 4, 2012, until after October 24, 2012, because Respondent, Mark Steiner, had been out of the
16 country and unable to meet with counsel. Additionally, a meeting had been scheduled between the
17 parties. The Division had no objections to this request.

18 On October 4, 2012, by Procedural Order, the status conference was continued to November
19 6, 2012.

20 On November 1, 2012, Respondents filed a Motion to Vacate the status conference scheduled
21 on November 6, 2012, until after November 25, 2012, due to a number of conflicts on Respondents'
22 counsel's schedule, which were beyond his control. Among the conflicts was the time required to
23 respond to a subpoena from the Division for copies of his clients' records. The Division had no
24 objections to Respondents' Motion to Vacate.

25 On November 6, 2012, by Procedural Order, the status conference was continued to
26 November 20, 2012.

27 ...

28 ...

1 On November 16, 2012, Respondents filed another Motion to Vacate the status conference
2 scheduled on November 20, 2012, citing additional conflicts and requiring more time to comply with
3 the Division's subpoena. The Division had no objections to this request.

4 On November 19, 2012, by Procedural Order, the status conference was continued to January
5 10, 2013.

6 On January 3, 2013, Respondents filed another Motion to Vacate the status conference
7 scheduled on January 10, 2013, citing more conflicts and scheduling problems.

8 On January 8, 2013, the Division filed a response arguing that the Respondents' request
9 should be denied.

10 On January 9, 2013, by Procedural Order, the status conference was continued to January 29, 2013.

11 On January 29, 2013, at the status conference, the Division and Respondents appeared with
12 counsel and agreed that a hearing be scheduled to commence on July 8, 2013. Subsequently, counsel
13 for the Division requested that a teleconference be scheduled to reschedule the proceeding due to a
14 conflict with his trial schedule.

15 On January 31, 2013, at the teleconference, the Division and Respondents appeared through
16 counsel to resolve the scheduling conflict with respect to the hearing. After a brief discussion, the
17 parties agreed that the proceeding be scheduled to commence on September 16, 2013, if they were
18 unable to resolve the issues raised by the T.O. and Notice.

19 On February 4, 2013, by Procedural Order, the hearing was continued to September 16, 2013.

20 On August 9, 2013, the Division filed a Motion for Leave to Amend Notice.
21 Contemporaneously therewith, the parties filed a Joint Motion for Continuance of the hearing and the
22 deadline to exchange copies of witness and exhibit lists. The joint motion also proposed that a status
23 conference be held on September 16, 2013, to establish new dates for exchanging copies of witness
24 and exhibit lists and for the hearing. Respondents did not file any objections to the Division's
25 Motion for Leave to Amend Notice.

26 On August 21, 2013, by Procedural Order, the Motion for Leave to Amend Notice was
27 granted as was the Joint Motion for Continuance of the hearing.

28 On September 6, 2013, the Division filed the Amended Notice.

1 On September 16, 2013, at the status conference, the Division and Respondents appeared with
2 counsel. Respondents also filed a request for hearing with respect to the Amended Notice.
3 Subsequently, the parties agreed that a hearing to last approximately one week should be scheduled to
4 commence on April 28, 2014, with documents to be exchanged approximately one month earlier.

5 On September 17, 2013, by Procedural Order, a hearing was scheduled to commence on April
6 28, 2014.

7 On October 10, 2013, Respondents filed an Answer to Amended Notice of Opportunity for
8 Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for
9 Administrative Penalties, Order of Revocation and Order for Other Affirmative Action.

10 On March 25, 2014, a Joint Stipulation to Extend Deadline for Exchanging Witness Lists and
11 Exhibit Lists ("Joint Stipulation") was filed by Respondents and the Division.

12 On March 26, 2014, by Procedural Order, the Joint Stipulation was granted.

13 On April 4, 2014, the Division filed a Motion to Allow Telephonic Testimony during the
14 proceeding. Respondents did not file any objections to the Division's motion.

15 On April 17, 2014, by Procedural Order, the Division's Motion to Allow Telephonic
16 Testimony was granted.

17 On April 18, 2014, Respondents filed a Motion to Vacate the hearing scheduled to commence
18 on April 28, 2014, arguing that a large number of Respondents' investors are satisfied with their
19 investments and that the Commission's action may interfere with transactions involving the
20 Respondents' ongoing business opportunities and may inhibit the prospective return expected to be
21 earned by investors.

22 On April 22, 2014, the Division filed a response opposing the Respondents' Motion to
23 Vacate. In its response, the Division argued that Respondents had ignored the T.O. and continued to
24 illegally offer and sell securities. The Division further argued that Respondents' ability to close
25 transactions was not dispositive of the issues raised by the Notice, but the Respondents' violations of
26 the Act were the controlling factors.

27 On April 24, 2014, by Procedural Order, Respondents' Motion to Vacate was denied.

28 On April 28, 2014, the parties filed Joint Fact Stipulations.

1 Also on April 28, 2014, a full public hearing was commenced before a duly authorized
2 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and
3 the Respondents were represented by counsel. Additional days of hearing were held on April 29, 30,
4 and May 1, 2014. At the conclusion of the hearing, a schedule for the filing of post-hearing briefs
5 was established whereby the Division would file an initial brief by June 23, 2014, the Respondents
6 would file a response by July 21, 2014, and the Division would file a reply by August 8, 2014.

7 On June 23, 2014, the Securities Division filed their Post-Hearing Opening Brief.

8 On July 21, 2014, Respondents filed a Motion Requesting Extension of Time to File
9 Respondent's [sic] Post-Hearing Brief. Respondents requested an extension of time to file their post-
10 hearing brief by August 12, 2014. The need for the extension of time was attributed to health issues
11 incurred by Respondents' counsel that were unforeseen at the time the briefing schedule was set. The
12 Division did not file an objection to the Respondents' Motion.

13 On August 1, 2014, by Procedural Order, the Respondents' Motion Requesting Extension of
14 Time to File Respondent's [sic] Post-Hearing Brief was granted. Respondents were ordered to file
15 their Post-Hearing brief on or before August 12, 2014. A corresponding extension of time was
16 allowed for the Division to file its reply brief.

17 On August 12, 2014, Respondents filed a Motion Requesting Further Extension of Time to
18 File Respondent's [sic] Post-Hearing Brief. Once again, the necessity of the extension was attributed
19 to health issues suffered by Respondents' counsel. Respondents requested a further extension to
20 submit the Post-Hearing brief by August 18, 2014.

21 On August 13, 2014, the Securities Division filed a Response to Motion Requesting Further
22 Extension of Time to File Respondent's [sic] Post-Hearing Brief. The Division stated that it did not
23 oppose the Respondents' motion for a six-day extension, but the Division would not oppose any
24 future requests for extension.

25 On August 14, 2014, by Procedural Order, Respondents' Motion Requesting Further
26 Extension of Time to File Respondent's [sic] Post-Hearing Brief was granted. Respondents were
27 ordered to file their Post-Hearing brief on or before August 22, 2014. A corresponding extension of
28 time was allowed for the Division to file its reply brief.

1 On August 18, 2014, the Commission received a telephone call from Respondent Mark
2 Steiner, informing the Commission that counsel for the Respondents had passed away.

3 On August 19, 2014, by Procedural Order, a telephonic procedural conference was scheduled
4 for August 22, 2014, to discuss any requested accommodation for the filing of the Respondents' Post-
5 Hearing Brief and the Respondents' plans for continued representation in this matter.

6 On August 22, 2014, a telephonic procedural conference was held. Respondent Mark Steiner
7 appeared on his own behalf and the Division appeared through counsel. The parties provided
8 information regarding the death of Respondents' counsel. Respondent Mark Steiner stated his desire
9 to obtain new counsel and requested additional time to do so, as well as time for new counsel to
10 adequately prepare the Respondents' Post-Hearing Brief. The parties agreed to an extension of
11 approximately thirty days for Respondent Mark Steiner to obtain new counsel, after which a
12 telephonic procedural conference would be held to set a date by when newly obtained counsel will
13 file the Post-Hearing Brief. Mr. Steiner was advised that while deceased counsel represented all
14 Respondents, Mr. Steiner cannot personally represent Respondent spouse, and whether new counsel
15 will represent all Respondents should be addressed when obtaining counsel.

16 On August 22, 2014, by Procedural Order, a telephonic procedural conference was scheduled
17 for September 22, 2014, to discuss scheduling submission of the Respondents' Post-Hearing Brief.

18 On September 22, 2014, a telephonic procedural conference was held. Respondent Mark
19 Steiner appeared on his own behalf and the Division appeared through counsel. Mr. Steiner advised
20 that he was still attempting to obtain counsel and requested additional time to do so. The Division
21 requested dates be set for the filing of briefs. A briefing schedule was discussed.

22 On September 22, 2014, by Procedural Order, the Respondents were ordered to file their Post-
23 Hearing brief on or before December 1, 2014. The Division was ordered to file its reply brief by
24 December 19, 2014.

25 On December 1, 2014, Respondent Mark Steiner filed a Post-Hearing Brief.

26 On December 19, 2014, the Division filed a Reply to Respondents' Post-Hearing Brief.

27 On August 24, 2015, the Administrative Law Judge filed a Recommended Opinion and Order.

28 On September 1, 2015, Respondent Mark Steiner filed a Request for Continuance to File

1 Exceptions to the Recommendation of the Administrative Law Judge ("Motion"). In the Motion,
2 Respondent Steiner generally stated exceptions to the Recommended Opinion and Order and he
3 requested additional time to support these exceptions with evidence from the record. Respondent
4 Steiner further requested time to seek new counsel. The length of the continuance requested by Mr.
5 Steiner was ninety days.

6 On September 2, 2015, a telephonic procedural conference was held. Respondent Mark
7 Steiner appeared on his own behalf and the Division appeared through counsel. The Division stated
8 that it did not oppose a thirty day continuance for the filing of exceptions, which would place the
9 matter before the Commission for consideration at the Open Meeting scheduled for October 20 and
10 21, 2015. Mr. Steiner admitted a lack of understanding of applicable procedural rules and requested a
11 longer extension of sixty to ninety days to respond to the Recommended Opinion and Order. Mr.
12 Steiner also stated his concerns over Respondent Spouse being found liable in the Recommended
13 Opinion and Order.

14 There being no objection to a continuance of thirty days, a continuance of that duration is
15 appropriate.

16 IT IS THEREFORE ORDERED that a continuance is granted for the filing of exceptions
17 to the Recommended Opinion and Order. The parties shall file their exceptions no later than
18 4:00 p.m. on October 5, 2015.

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
20 Communications) is in effect and shall remain in effect until the Commission's Decision in this
21 matter is final and non-appealable.

22 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
23 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
24 *pro hac vice*.

25 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
27 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
28 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is

1 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
2 Administrative Law Judge or the Commission.

3 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
4 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
5 ruling at hearing.

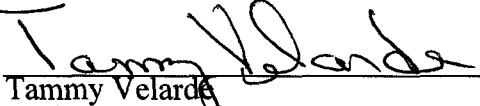
6 DATED this 2nd day of September, 2015.

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8 
9 MARK PRENY
10 ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/emailed
12 this 2nd day of September, 2015 to:

13 Mark Steiner
14 Shelly Steiner
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